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Proceedings of the Government of His Highness the Maharaja of Mysore.

READ—

Letter No. 13176, dated the 27th May 1908, from the Revenue Commissioner in Mysore, seeking instructions of Government on certain points which have arisen in appeal case No. 79 of 1907-08, on the file of his Court.

No. R. 1280-9½—R. M. 310-07-2, DATED BANGALORE, 25TH AUGUST 1908.

ORDER THEREON.—A jungle-stream taking its rise in some hills above the village of Sunkal-Hosur in the Hole-Narsipur Taluk and passing through dry land Survey No. 5 of that village, belonging to one Venkoba Rao, was dammed up by him in 1904-05 within the limits of the said survey number, in order to irrigate it. Thereupon, the Jamabandi Officer (Mr. B. Ramaswamaiya) directed that a water-rate of Rs. 20-11-6 should be levied from Venkoba Rao. The latter appealed against this order to the Deputy Commissioner, stating that he was not liable to pay any water-rate under para III of the Survey Guarantee, as he had merely utilized the water of a stream flowing through his land. The Deputy Commissioner, however, rejected the appeal. On second appeal, the Revenue Commissioner has forwarded the case for the orders of Government, as he feels some doubt whether, in accordance with the principles laid down in Government Proceedings No. 11033—641, dated the 17th December 1890, and No. 3542—51, dated the 15th March 1903, and para III of the Survey Guarantee, the appellant would not be entitled to exemption from payment of water-rate; and is of opinion that, if such a right on behalf of land-holders to irrigate their lands by damming up jungle-streams within their own lands is recognized, it would be necessary to subject it to some restrictions, in order to safe-guard the rights of Government to utilize, when occasion arises, the water-supply which may be derived therefrom.

The orders referred to by the Revenue Commissioner are not, as observed by him, exactly applicable to the present case. The order of 1890 refers to a case in which the water was derived from springs arising in the land itself; and Government Proceedings No. 3542-51, dated the 5th March 1903, merely lays down that an occupant, who constructs dams across, or draws water direct from, a stream, not within the boundary of his occupancy, is liable to water-rate, and does not decide what are the rights of a land-holder to use the water of streams passing through his holding. The stream from which the water is drawn is stated to be a small affluent of the Hemavati. The right to its water vests therefore in Government, under Section 36 of the Land Revenue Regulation; and Government may levy a water-rate for its use under Section 53. Para III of the Survey Guarantee of 1870 is merely intended to encourage land-holders to create new sources of irrigation for their own lands, and does not confer any power on them to use water flowing in defined streams through their lands, so as to affect the supply to any Government work of irrigation. In the case under reference, no water-rate need be levied, as the dam has been constructed within the land itself, and there are no Government works of irrigation below it, dependent on the water of the stream in question. Government, however, consider that no person should be allowed to utilize water flowing in streams passing through private holdings without obtaining previous permission; and such permission, when granted, should be subject to the express condition that the use of water may be prohibited and any private work of irrigation, which may have been constructed, may be required to be removed, if such a course is found necessary, in order to construct any new Government work of irrigation, or for the purpose of securing an adequate supply of water for any such existing work, or for improving it.

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